

आयकर अपीलिय अधिकरण "C" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI
BEFORE SHRI MAHAVIR SINGH, JUDICIAL MEMBER AND
SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No. 3653/Mum/2014

(निर्धारण वर्ष / Assessment Year : 2006-07)

Oracle Financial Services Software Limited, Oracle Park, Off Western Express Highway, Goregaon(East), Mumbai-400057	बनाम/ v.	Income Tax Officer(TDS) 2(1), Mumbai
स्थायी लेखा सं./PAN : AAACC1448B		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by	Shri Paras S. Savla and Sh Pratic Poddar
Revenue by :	Shri Naveen Gupta

सुनवाई की तारीख /**Date of Hearing** : 13-06-2016

घोषणा की तारीख /**Date of Pronouncement** : 17.08.2016

आदेश / O R D E R

PER RAMIT KOCHAR, Accountant Member

This appeal, filed by the assessee company, being ITA No. 3653/Mum/2014, is directed against appellate order dated 17th February, 2014 passed by learned Commissioner of Income Tax (Appeals)- 13, Mumbai (hereinafter called "the CIT(A)"), for the assessment year 2006-07, the appellate proceedings before the learned CIT(A) arising from the order dated 31st March 2011 passed by the learned Assessing Officer (hereinafter called "the AO") u/s 201(1) and 201(1A) of the Income Tax Act,1961 (Hereinafter called "the Act").

2. The grounds of appeal raised by the assessee in the memo of appeal filed with the Income Tax Appellate Tribunal, Mumbai (hereinafter called “the Tribunal”) reads as under:-

“1. On facts and in the circumstances of the case and in law, the learned Commissioner of Income-tax Appeals, Mumbai (‘CIT(A)-13’) has erred in confirming interest of Rs.9,65,226 levied by the Assessing Officer (‘AO’) under section 201(1A) of the Act in respect of provision of expenses.

2. Without prejudice, on the facts and in the circumstances of the case and in law, the learned CIT(A) erred in confirming interest computed under Section 201(1A) of the Act upto the date of assessment order instead only upto the date of payment of TDS in subsequent year.”

3. The brief facts of the case are that survey action was conducted against the assessee on 19.02.2008 u/s. 133A of the Act at the business premises of the assessee. The assessee is engaged in the business of providing IT solutions to the financial services industry worldwide through a comprehensive range of products and services. Pursuant to survey u/s 133A of the Act, notices u/s 201(1) and 201(1A) of the Act were issued to the assessee calling for details which were submitted by the assessee. The AO observed from the Tax Audit Report that Rs. 7,06,97,110/- was disallowed u/s 40(a) for non-deduction and payment of tax deducted at source u/s. 194C, 194J and 194I of the Act. The assessee also provided details of TDS deducted and paid on the aforesaid amount in subsequent years, from which the AO observed that the assessee only paid TDS on gross amount of expenses of Rs.4,73,32,802/- while no TDS was deducted on the balance amount of Rs.2,33,64,308/- for which no details and explanation were furnished. The AO raised a demand of Rs.12,61,734/- for such non-deduction and non payment of TDS by the assessee u/s. 201(1) of the Act and also raised further demand of Rs.9,65,226/- u/s 201(1A) of the Act towards

interest from the period from April 2005 to March 2011, vide orders dated 31.03.2011 passed by the AO u/s 201(1) and 201(1A) of the Act.

4. Aggrieved by the orders dated 31.03.2011 passed by the AO 31.03.2011 u/s 201(1) and 201(1A) of the Act, the assessee preferred appeal before the learned CIT(A) who after considering the fact that the assessee has duly made payments of TDS on the said amount of Rs.2,33,64,308/- in subsequent assessment year 2007-08 held that the assessee cannot be held liable u/s. 201(1) of the Act , and the learned CIT(A) ordered deletion of demand of Rs.12,61,734/- raised against the assessee u/s 201(1) of the Act, while the learned CIT(A) confirmed the demand of Rs.9,65,226/- raised against the assessee towards interest u/s 201(1A) of the Act for the period starting from April 2005 to March 2011 on the grounds that interest is compensatory in nature relying on decision of Hon'ble Supreme Court in the case of Hindustan Coca-Cola Limited (2007) 293 ITR 226(SC) , vide appellate orders dated 17.02.2014 passed by the learned CIT(A).

5. Aggrieved by the appellate orders dated 17.02.2014 passed by the learned CIT(A), the assessee has filed second appeal with the Tribunal.

6. The learned counsel for the assessee at the outset submitted that interest u/s 201(1A) of the Act is charged by the Revenue from the beginning of assessment year i.e. starting from April 2005 till the finalization of the order u/s 201/201(1A) of the Act on 31-03-2011 while the interest should have been charged by the authorities below till the date of actual payment of TDS by the assessee to the credit of Central Government as in that case the Revenue should not have grievance once TDS is duly paid by the assessee to the credit of Central Government as interest in compensatory in nature. The learned counsel for the assessee submitted that learned CIT(A) has deleted the demand of Rs.12,61,734/- raised against the assessee u/s. 201(1) of the

Act on the grounds that the same stood paid in the subsequent assessment year 2007-08. Thus, it was submitted that the assessee is agreeable to pay interest till the date of actual payment of TDS by the assessee to the credit of Central Government. The learned DR submitted that matter may be set aside to the file of AO for verification of the afore-stated claim of the assessee .

7. We have considered the rival contentions and perused the material on records including the case laws relied upon. We have observed that the assessee was held as assessee in-default u/s 201(1) /201(1A) of the Act for non-deduction/payment of TDS amount of Rs.12,61,734/- on the gross amount of expenses of Rs.2,33,64,308/- under Section 194C, 194J and 194I of the Act and interest thereof for non-payment of TDS to the credit of Central Government . The said amount of Rs. 2,33,64,308/- on which TDS was not deducted / paid to the credit of Central Government stood disallowed u/s. 40(a) of the Act while computing income of the assessee for the assessment year 2006-07 , which amount later on stood allowed as deduction while computing income of the assessee in the subsequent assessment year 2007-08 as the assessee duly paid the TDS of Rs.12,61,734/- in the subsequent assessment year 2007-08. The learned CIT(A) therefore ordered the deletion of the said amount of demand of Rs.12,61,734/- raised against the assessee u/s. 201(1) of the Act vide orders dated 17.2.2014 and matter stood concluded so far demand of Rs. 12,61,734/- was raised u/s. 201(1) of the Act is concerned. The assessee is aggrieved by the levy of interest u/s 201(1A) of the Act amounting to Rs.9,65,226/- raised against the assessee from April 2005 to March 2011 i.e. till the date of the order dated 31.3.2011 passed by the AO u/s 201(1) and 201(1A) of the Act . It is the say of learned counsel for the assessee that the assessee is agreeable to pay interest u/s 201(1A) of the Act till the date of payment of TDS by the assessee to the credit of Central Government . The provisions of Section 201(1A) of the Act are very clear that interest can only be charged till the date on which such tax was actually paid

by the assessee. We are of considered view that interest being compensatory in nature, the assessee is liable to pay interest u/s 201(1A) of the Act till the date of actual payment of TDS by the assessee to the credit of Central Government and we do not see that how Revenue is aggrieved once outstanding TDS amount stood duly paid by the assessee to the Credit of Central Government and thus we order that Revenue is entitled for interest on outstanding amount of TDS only till the date of actual payment of TDS by the assessee to the Credit of Central Government and not till the date of framing of the order on 31-03-2011 by the AO u/s 201(1) and 201(1A) of the Act. We order accordingly.

8. In the result, assessee's appeal in ITA No 3653/Mum/2014 for the assessment year 2006-07 is allowed as indicated above.

Order pronounced in the open court on 17th August , 2016.

आदेश की घोषणा खुले न्यायालय में दिनांक: 17-08-2016 को की गई ।

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated **17-08-2016**

व.नि.स./ R.K., Ex. Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)- concerned, Mumbai
4. आयकर आयुक्त / CIT- Concerned, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai "A" Bench
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई/ ITAT, Mumbai